

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

5:10cv109-1-V

5:03cr48-V

ELIAS ECHEVERRIA-MENDEZ,)
)
 Petitioner,)
)
 v.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)

)

ORDER

THIS MATTER comes before the Court upon Petitioner's Motion for Reconsideration pursuant to Rule 59(e) (Doc. No. 16), filed September 8, 2010.

On August 20, 2010, this Court dismissed Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 as successive. Petitioner has now filed the instant motion asking the Court to reconsider the dismissal of his Motion to Vacate.

A district court has the discretion to grant a Rule 59(e) motion only in very narrow circumstances: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. See Pacific Ins. Co. v. American Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). None of these criteria has been met.

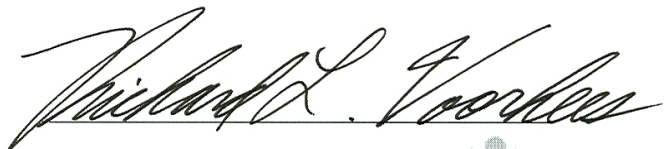
Petitioner argues that this Court's dismissal of his Motion to Vacate as successive was incorrect as a matter of law. To this extent he merely reargues a point already decided by this Court. Petitioner then argues that even if his motion is successive he satisfies the criteria for permitting a second or successive motion to vacate. Petitioner mistakenly assumes that this

Court may determine when a second or successive motion to vacate may be filed. As this court has previously informed Petitioner, he must first certify his claim with the Fourth Circuit Court of Appeals before he can file his second or successive motion to vacate in this Court. 28 U.S.C. § 2255(h).

THEREFORE, IT IS HEREBY ORDERED that:

1. Motion for Reconsideration pursuant to Rule 59(e) (Doc. No. 16) is **DENIED**; and
2. It is further ordered that pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000)(when relief is denied on procedural grounds, a petitioner must establish both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right).

Signed: December 15, 2010



Richard L. Voorhees
United States District Judge

